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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SUMMONS FOR JUDGMENT NO.196 OF 2003
IN
SUMMARY SUIT NO.4229 OF 2001

Mrs.Anita H. Pardasani)..Plaintiff

Versus

Ladharam Lalchand Rajani (HUF) and anr.)..Defendants

Mr.Uttam G. Tahiliani for the Plaintiff.

Mr.Kukreja with Mr.A.Delhiwala i/b.M/s.Kukreja & Co. for the Defendants.

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **3RD APRIL 2006**

P.C.:

. This Summons for Judgement has been taken out for a decree in the sum of Rs.4,00,000/- together with interest at the rate of 18%. The Plaintiff has claimed this amount on the basis of two Bills of Exchange each for Rs.2,00,000/-. According to the Plaintiff, these Bills of Exchange were drawn by Defendant No.1 and accepted by Defendant No.2. Cheques issued by the Defendants towards repayment of the amount mentioned in the Bills of Exchange have been dishonoured. Hence, the present Suit.

2. The defence raised by the Defendants is that the

Bill of Exchange at Exhibit "B" is not valid in law as the person who has drawn the Bill of Exchange has also accepted it, which, according to the learned Counsel appearing for the Defendants, is not permissible in law. He points out that under the Negotiable Instruments Act, 1881, there must be three persons, namely, (i) the drawer of Bill of Exchange; (ii) the acceptor and (iii) the drawee. He therefore submits that the Bill of Exchange dated 16th January 1999 is not valid and the Summary Suit will not lie on such a document.

3. Notices issued by the Plaintiffs on 8th May 2001 and 12th May 2001 have been replied on behalf of the Defendants on 14th June 2001. According to the Defendants, a temporary loan was to be arranged by the Defendants of Rs.2,00,000/- and cheques with regard to this loan have been issued in favour of the Plaintiff. It is submitted that these cheques were given to the Plaintiff in respect of an loan and, therefore, Summary Suit was filed on the basis of these cheques was not maintainable. It is also submitted that triable issues have been raised by the Defendants and, therefore, unconditional leave to defend the Suit should be granted by this Court.

4. It is further submitted that, assuming the Bills

of Exchange are valid, the amounts payable on the Bills of Exchange have been repaid by some third parties on behalf of the Defendants. However, there is nothing on record to indicate that the amounts have in fact been repaid. No affidavit of these third parties is on record to show that the amounts were repaid through the third parties.

5. In my view, therefore, there are no triable issues. The judgment of the Supreme Court in the case of *M/s.Mechalec Engineers & Manufacturers* vs. *M/s.Basic Equipment Corporation*, **AIR 1977 SC 577**, indicates the well settled position in law. However, in my view, there is no indication in the affidavit filed by the Defendants that the amounts under the Bills of Exchange have actually be repaid. The Demand Drafts mentioned in paragraph 5 of the affidavit of the Defendants were in the name of Ladharam Lalchand Rajani (HUF). These are not endorsed in favour of the Plaintiffs. Therefore, there is nothing to show that these amounts have actually been paid to the Plaintiff.

6. Hence, conditional leave granted upon the Defendants depositing a sum of Rs.2,00,000/- in this Court within six weeks from today. In the event the Defendants deposit the aforesaid amount, the

Prothonotary & Senior Master to invested the same in a Fixed Deposit of a Nationalised Bank, initially for a period of three years, to be renewed thereafter. If the amount is not deposited within the stipulated period, the Plaintiff would be entitled to a decree as prayed for.

7. Upon deposit of the amount as aforesaid, the Suit to be transferred to the list of Commercial Causes. Written Statement to be filed within four weeks from the date of the deposit. Affidavit, list of documents to be filed within four weeks thereafter. Discovery and inspection be completed within six weeks thereafter.

8. Summons for Judgment disposed of accordingly.